

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 10-28(1)
Z.C. Case No. 10-28
901 Monroe Street, LLC
(Consolidated Approval for a Planned Unit Development and Zoning Map Amendment)
Order on Remand
July 25, 2013

This proceeding concerns an application submitted by 901 Monroe Street, LLC ("Applicant") for a planned unit development ("PUD") and related Zoning Map amendment in connection with the development of a property adjacent to the Brookland/CUA Metrorail station in Northeast Washington, D.C. (the "Project"). By Order effective June 8, 2012, the Zoning Commission for the District of Columbia (the "Commission") approved the application subject to conditions ("Z.C. Order No. 10-28").

Parties to this proceeding, in addition to the Applicant, are Advisory Neighborhood Commission ("ANC") 5B, the Brookland Neighborhood Citizens Association ("BNCA"), and a group of residents residing within 200 feet of the subject property (the "200-Footers"). The 200-Footers petitioned the District of Columbia Court of Appeals ("Court of Appeals" or "DCCA") to review the Commission's Order. By decision dated May 16, 2013, the Court of Appeals concluded that although "the Commission addressed this case with an open mind and considerable care and deliberation" and "for the most part, the Commission's findings are supported by substantial evidence on the record as a whole and that its legal analysis is generally sound," the Court nevertheless found that "that the Commission failed to make findings on several disputed issues" and therefore remanded the case back to the Commission for additional findings of fact and conclusions of law. *Guy Durant, et al., v. D.C. Zoning Comm'n*, 65 A3d 1161, 1163 (D.C. 2013).

Specifically, the decision contained the following remand instruction:

During the public hearing, the petitioners raised a number of material issues, calling into question whether the application was consistent with the Comprehensive Plan. Based on our own review of the Commission's order and the record, we conclude that the Commission did not address or explain its resolution of three of these issues . . . Specifically, the Commission should:

1. Resolve the dispute regarding the FLUM designations, and determine whether the project is consistent with the Plan as a whole in light of its resolution of that issue;
2. Explain whether the proposal is consistent with the written Plan policies discussed above: UNE-1.1.1, LU-2.16, LU-2.1.8, LU-2.3.1, and with the portions of the UNE-2.6.1 and LU-1.3.1 omitted from its quotation of these policies;
3. Make findings regarding the GPM's designation of the property as a Neighborhood Conservation Area, and determine whether the developer's application is consistent with the Plan in light of that designation; and
4. Make any other necessary findings of fact and conclusions of law, in accordance with this opinion."

65 A.3d 1171 -1172.

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PRELIMINARY MATTERS

Pursuant to the Court of Appeals' instruction to the Commission that it provide "supplemental findings and related conclusions of law" on the stated issues, the Commission, through the issuance of a Procedural Order on Remand requested the Applicant, as the prevailing party, to provide a proposed order on remand that makes the determinations, explanations, and findings required by the Court of Appeals. The Applicant provided a draft order on June 24, 2013. (Exhibit ("Ex.") 347.)

The Commission also provided ANC 5B, the 200-Footers, and BNCA the opportunity to each provide a response that identifies any alleged errors or omissions in the findings of fact and conclusions of law stated in the proposed order.

This Order reflects the Commission's supplemental Findings of Fact and Conclusions of Law on the issues remanded by the Court. This Order, therefore, will not restate all facts concerning the Project, but only those relevant to the remand issues. Where appropriate, this Order will identify those finding of facts contained in Z.C. Order No. 10-28 that support the supplemental findings made.

FINDINGS OF FACT

THE LAND USE ELEMENT

1. Based on the provisions of the Comprehensive Plan itself and the testimony of Office of Planning ("OP"), the Commission finds the Comprehensive Plan and the Brookland Small Area Plan must be considered in totality, not by individual land use elements, when determining whether the Project is not inconsistent with the Comprehensive Plan and elements thereof. (Ex. 80, 320.)
2. The Land Use Element of the Comprehensive Plan provides:

The District's Metrorail stations include 15 stations within the Central Employment Area and 25 "neighborhood" stations (see Map 3.5). Looking forward, certain principles should be applied in the management of land around all of the District's neighborhood stations. These include: A preference for mixed residential and commercial uses rather than single purpose uses, particularly a preference for housing above ground floor retail uses; A preference for diverse housing types, including both market-rate and affordable units and housing for seniors and others with mobility impairments; A priority on attractive, pedestrian-friendly design and a de-emphasis on auto-oriented uses and surface parking; Provision of well-designed, well-programmed, and well-maintained public open spaces; A "stepping down" of densities with distance away from each station, protecting lower density uses in the vicinity; Convenient and comfortable connections to the bus system, thereby expanding access to the stations and increasing Metro's ability to serve all parts of the city; and A high level of pedestrian and bicycle connectivity between the stations and the neighborhoods around them.

(10-A DCMR § 306.4 (LU-1.3.))

3. The Project supports the principles to be applied in the management of land around Metrorail stations set forth directly above because it creates: mixed residential and commercial uses with housing above ground floor retail; an attractive, pedestrian-friendly design and a de-emphasis on auto-oriented uses and surface parking; well-designed, well-programmed, and well-maintained public open spaces; and a high level of pedestrian and bicycle connectivity between the Brookland/CUA Metro Station and the neighborhood around it. (Ex. 25; 1/19/12 Transcript (“Tr.”) pp. 35-54.)

4. The Land Use Element of the Comprehensive Plan also provides:

Encourage the development of Metro stations as anchors for economic and civic development in locations that currently lack adequate neighborhood shopping opportunities and employment. The establishment and growth of mixed use centers at Metrorail stations should be supported as a way to reduce automobile congestion, improve air quality, increase jobs, provide a range of retail goods and services, reduce reliance on the automobile, enhance neighborhood stability, create a stronger sense of place, provide civic gathering places, and capitalize on the development and public transportation opportunities which the stations provide. This policy should not be interpreted to outweigh other land use policies which call for neighborhood conservation. Each Metro station area is unique and must be treated as such in planning and development decisions. The Future Land Use Map expresses the desired intensity and mix of uses around each station, and the Area Elements (and in some cases Small Area Plans) provide more detailed direction for each station area.

(10-A DCMR § 306.10 (LU-1.3.1).)

5. The Project will support the development of the Brookland/CUA Metrorail station as an anchor for economic and civic development in an area that currently lacks adequate neighborhood shopping opportunities and employment. The Project will reduce automobile congestion, improve air quality, increase jobs, provide a range of goods and services, reduce reliance on the automobile, enhance neighborhood stability, create a stronger sense of place, and capitalize on the development and public transportation opportunities which the Brookland/CUA Metrorail station provides. (Ex. 25; 1/19/12 Tr. pp. 35-54; Z.C. Order No. 10-28 Findings of Fact (“FOF”) 29-32, 39.)
6. The Commission acknowledges that the policies embodied in LU-1.3.1 do not outweigh other land use policies, including those which call for neighborhood preservation, in every instance. The Commission considers the unique characteristics of the area surrounding the Brookland/CUA Metrorail station and the specific features of the Project in their totality in arriving at its decision regarding the Project. (Ex. 25; 1/19/12 Tr. pp. 35-54; FOF 26-27.)

7. The Land Use Element of the Comprehensive Plan also provides:

Ensure that development adjacent to Metrorail stations is planned and designed to respect the character, scale, and integrity of adjacent neighborhoods. For stations that are located within or close to low density areas, building heights should “step down” as needed to avoid dramatic contrasts in height and scale between the station area and nearby residential streets and yards.

(10-A DCMR § 306.14 (LU-1.3.5).)

8. The Project's design respects the character, scale, and integrity of the adjacent neighborhoods. The Project's scale mediates between the 70-foot-high developments being constructed at CUA campus, the densities the Small Area Plan supports adjacent to the Brookland Metrorail station, and the single-family residences to the east and south of the Project. The Project has been designed to "step down" as needed to avoid dramatic contrasts between the Project and surrounding areas. The Commission gives due deference to OP's recommendation that the Project's scale is consistent with the adjacent neighborhoods. (Ex. 25; 1/19/12 Tr. pp. 35-54; FOF 35.)
9. The Land Use Element of the Comprehensive Plan also provides:

Protect and conserve the District's stable, low density neighborhoods and ensure that their zoning reflects their established low density character. Carefully manage the development of vacant land and the alteration of existing structures in and adjacent to single family neighborhoods in order to protect low density character, preserve open space, and maintain neighborhood scale.

(10-A DCMR § 309.10 (LU-2.1.5).)

10. The Land Use Element of the Comprehensive Plan also provides:

Discourage the replacement of quality homes in good physical condition with new homes that are substantially larger, taller, and bulkier than the prevailing building stock.

(10-A DCMR § 309.11 (LU-2.1.6).)

11. The Commission acknowledges that LU-2.1.6 discourages "Teardowns." The Commission finds that the Project tears down four existing residential homes and that the removal of the homes is necessary in order to complete the Project. The Commission further finds that, on balance, the loss of four homes is outweighed by the benefits that will accrue to the neighborhood and the city by advancing the land use policies that support development of the Project, such as encouraging development around Metrorail stations. The Project will provide such benefits as new housing and affordable housing; urban architecture, landscaping, and creation of open spaces; site planning and efficient and economical land uses; effective and safe vehicular and pedestrian access; environmental benefits; revenue for the District; and employment and local business stimulation. (Ex. 25; 1/19/12 Tr. pp. 35-54; FOF 29-32, 39.)
12. The Land Use Element of the Comprehensive Plan also provides:

Discourage the zoning of areas currently developed with single family homes, duplexes, and rowhouses (e.g., R-1 through R-4) for multifamily apartments (e.g., R-5) where such action would likely result in the demolition of housing in good condition and its replacement with structures that are potentially out of character with the existing neighborhood.

(10-A DCMR § 309.13 (LU-2.1.8).)

13. The Commission acknowledges that LU-2.1.8 discourages the rezoning of areas currently developed with single family homes in order to accommodate multifamily apartments where such rezoning would result in the demolition of homes in good condition and the construction of structures out of character with the existing neighborhood.
14. However, the Project is not out of character with the existing neighborhood. The Applicant incorporated changes into the Project that included the provision of additional public amenities, increased building setbacks, refinements to the building's massing and appearance, a decrease in the number of proposed apartments, additional landscaping and parking spaces, and an enhanced transportation demand management plan. These changes enhanced the Project's compatibility with the surrounding neighborhood and result in a structure compatible with the surrounding neighborhood. Moreover, the Commission finds that LU-2.1.8 must be considered together with the other policies of the Land Use Element and the Comprehensive Plan encouraging new mixed use transit oriented development. The Commission concurs with OP's view that the Project is not inconsistent with this policy. (Ex. 80, p. 8; FOF 35.)
15. The Land Use Element of the Comprehensive Plan also provides:

Maintain zoning regulations and development review procedures that: (a) prevent the encroachment of inappropriate commercial uses in residential areas; and (b) limit the scale and extent of non-residential uses that are generally compatible with residential uses, but present the potential for conflicts when they are excessively concentrated or out of scale with the neighborhood.

(10-A DCMR § 311.3 (LU-2.3.1).)

16. The Commission acknowledges that Land Use Policy LU-2.3.1 encourages zoning regulations and development review procedures to prevent inappropriate encroachment of commercial uses in residential areas and to limit the scale and extent of non-residential uses that may create conflicts or be out of scale with a neighborhood. This policy does not prohibit commercial uses in residential areas as long as such uses are appropriately reviewed to assess their impact.
17. The Commission finds that the many changes made to the Project by the Applicant during the application process – including increased building setbacks, refinements to the massing and appearance, enclosed loading facilities, and enhanced landscaping along Monroe Street – reflect the Commission's careful review and assessment of the Project with respect to encroachment of commercial uses in residential areas. In light of these changes and the Commission's careful review, the Commission finds that the Project does not extend inappropriate commercial uses into residential areas and is not excessively concentrated or out of scale with the neighborhood. (Ex. 25; 1/19/12 Tr. pp. 35-54; FOF 35.)

THE UPPER NORTHEAST AREA ELEMENT

18. The Upper Northeast Area Element of the Comprehensive Plan provides:

Protect and enhance the stable neighborhoods of Upper Northeast, such as Michigan Park, North Michigan Park, University Heights, Woodridge, Brookland, Queens Chapel, South Central, Lamond Riggs, and Arboretum. The residential character of

these areas shall be conserved, and places of historic significance, gateways, parks, and special places shall be enhanced.

(10-A DCMR § 2408.2 (UNE-1.1.1).)

19. The Upper Northeast Area Element of the Comprehensive Plan provides:

Capitalize on the presence of the Metro stations at Rhode Island Avenue, Brookland/CUA, and Fort Totten, to provide new transit-oriented housing, community services, and jobs. New development around each of these three stations is strongly supported. The District will coordinate with WMATA to ensure that the design, density, and type of housing or other proposed development at these stations is compatible with surrounding neighborhoods; respects community concerns and feedback; serves a variety of household incomes; and mitigates impacts on parking, traffic, and public services. Development shall comply with other provisions of the Comprehensive Plan regarding the compatibility of new land uses with established development, the provision of appropriate open space, and mitigation of impacts on traffic, parking, and public services.

(10-A DCMR § 2408.4 (UNE-1.1.3).)

20. The Upper Northeast Area Element of the Comprehensive Plan provides:

Encourage moderate-density mixed use development on vacant and underutilized property in the vicinity of the Brookland/CUA Metro station, including the parking lot east of the station. Special care should be taken to protect the existing low-scale residential uses along and east of 10th Street NE, retain the number of bus bays at the station, and develop strategies to deal with overflow parking and cut-through traffic in the station vicinity.

(10-A DCMR § 2416.3 (UNE-2.6.1).)

21. The Commission acknowledges that UNE-1.1.1 encourages the protection, enhancement, and character of residential neighborhoods of Upper Northeast, including Brookland. However, based on its own terms and OP's analysis, the Comprehensive Plan requires that this policy must be balanced with other competing land use policies. In addition, this policy does not prohibit new development in residential neighborhoods in the Upper Northeast area.
22. The creation of a Moderate-Density Mixed-Use development at this location near the Brookland/CUA Metrorail station is appropriate and not inconsistent with the Upper Northeast Element and the Comprehensive Plan as a whole. Policies, such as UNE-2.6.1, encourage this type of development, and the Project's features reflect the careful balance of protecting the existing residential neighborhood and the development of mixed-use transit-oriented projects. (FOF 29-35.)
23. Because of the Project's many features and benefits, such as neighborhood-serving retail and features intended to preserve the residential character of the neighborhood, including the building's setbacks, the building's massing and appearance, the number of proposed apartments, and

landscaping, the Project will not destabilize the existing residential neighborhood. (Ex. 25; 1/19/12 Tr. pp. 35-54; FOF 29-31, 33-34.)

24. The Commission acknowledges that policy UNE-2.6.1, which encourages moderate-density mixed-use development in the vicinity of the Brookland/CUA Metro station, also encourages special care for protecting low-scale residential uses along and east of 10th Street, N.E. However, the policy does not advise that no development should occur along 10th Street.
25. When the totality of policy UNE-2.6.1 is considered with the many elements of the Comprehensive Plan that encourage this mixed-use transit oriented development, the Project is not inconsistent with the this policy or the Comprehensive Plan as a whole. The Project incorporates many design features, such as setbacks, to respect and protect the low-scale residential character of the surrounding neighborhood, particularly along 10th Street. (Ex. 25; 1/19/12 Tr. pp. 35-54; FOF 30.)

THE FUTURE LAND USE MAP

26. The FLUM is not a zoning map in that it is not parcel specific and it does not set forth specific requirements for setback, height, use, and the like. Rather, the FLUM is to be interpreted broadly in conjunction with the text of the Comprehensive Plan, including the citywide elements and the area elements, as well as approved Small Area Plans. (10-A DCMR § 226.1.) The Comprehensive Plan permits the Commission to approve heights and densities through the PUD process that exceed those set forth in the FLUM. (“It should be noted that the granting of density bonuses (for example, through Planned Unit Developments) may result in heights that exceed the typical ranges cited here.”). (10-A DCMR § 226.1(c).)
27. The FLUM designates the existing zoning classification for the Project as part Low-Density Residential, part Low-Density Mixed-Use, and part Moderate-Density Mixed-Use. More than half of the Project’s square footage is classified under the FLUM as Low-Density Residential. The balance of the Project is classified as Moderate-Density Mixed-Use and Low-Density Mixed-Use. Because the FLUM is not boundary or parcel specific, the exact distribution of land among different land use classifications cannot be determined. (FOF 28.)
28. OP incorrectly stated in its January 9, 2012 report that that the FLUM designates more than half the Project as Moderate-Density Mixed-Use. The Commission repeated the mistake in its Order. OP corrected its mistake in its February 23, 2012 supplemental report in which it recognized that the majority of the Project is classified as Low-Density Residential. The Commission corrects its mistake as set forth in the preceding paragraph. (Ex. 320.)
29. The Commission’s approval of the Project changes the zoning from the R-2 and C-1 Zone Districts to the C-2-B Zone District. The C-2-B Zone District is congruent with both Moderate-Density Mixed-Use and Medium-Density Mixed-Use. The change to the C-2-B Zone District is limited by the PUD restrictions, in particular those with respect to the Project’s height and density. (Ex. 25; FOF 35.)
30. The Project will extend a Moderate-Density Mixed-Use into areas that are designated Low-Density Residential and Low-Density Mixed-Use on the FLUM. (Ex. 25.)

31. Interpreted broadly in conjunction with the Comprehensive Plan as a whole, the FLUM's designation of more than half of the Project as Low-Density Residential does not render the Project inconsistent with the FLUM. The precise amount of the Property that is designated as Low-Density Residential on the FLUM is not a material consideration for the Commission to approve the Project. The neighborhood context, the characteristics of the Project, and the applicable policies in the Comprehensive Plan allow the Commission to conclude that extending the proposed Moderate-Density Mixed-Use into the Low-Density Residential-designated area of the Property is appropriate for this Property. (Ex. 25, 80, 320.)
32. The PUD limitations placed on the height and density of the Project mitigate against the potential adverse impacts from the imposition of Moderate-Density Mixed-Use into portions of a lot designated Low-Density Residential on the FLUM. (Ex. 25; FOF 35.)
33. The competing policies encouraging transit oriented mixed use growth near Metrorail stations outweighs the policies embodied in the FLUM's designation of more than one-half the Project as Low-Density Residential. (Ex. 25, 80.)

THE GENERALIZED POLICY MAP

34. The Generalized Policy Map (GPM) of the Comprehensive Plan provides:

Neighborhood Conservation areas have very little vacant or underutilized land. They are primarily residential in character. Maintenance of existing land uses and community character is anticipated over the next 20 years. Where change occurs, it will be modest in scale and will consist primarily of scattered site infill housing, public facilities, and institutional uses. Major changes in density over current (2005) conditions are not expected but some new development and reuse opportunities are anticipated. Neighborhood Conservation Areas that are designated "PDR" on the Future Land Use Map are expected to be retained with the mix of industrial, office, and retail uses they have historically provided.

(10-A DCMR § 223.4.)

35. The GPM of the Comprehensive Plan also provides:

The guiding philosophy in Neighborhood Conservation Areas is to conserve and enhance established neighborhoods. Limited development and redevelopment opportunities do exist within these areas but they are small in scale. The diversity of land uses and building types in these areas should be maintained and new development and alterations should be compatible with the existing scale and architectural character of each area. Densities in Neighborhood Conservation Areas are guided by the Future Land Use Map.

(10-A DCMR § 223.5.)

36. The Commission acknowledges that the Project is designated as a Neighborhood Conservation Area on the GPM. The Project is adjacent to, but not part of, the Land Use Change Area for the Brookland/CUA Metrorail station.

37. By its own terms, the GPM is not a zoning map. It is not parcel specific and it does not set forth specific requirements for setbacks, height, use, parking, and the like. Rather, the GPM is to be interpreted broadly in conjunction with the text and other maps of the Comprehensive Plan. A site's designation on the GPM is not dispositive for how the land should be used. (10-A DCMR § 223.2; Ex. 80, 320.)
38. The categories of the GPM are broad and, if a developed residential area is not designated as a Land Use Change Area on the GPM, then it is generally designated as a Neighborhood Conservation Area. By its own terms, the GPM does not offer a category for redevelopment of a non-vacant residential area. (10-A DCMR § 223.)
39. The Commission finds that the Project is compatible with the existing scale and architectural character of the area. (Ex. 25, 80; 1/19/12 Tr. pp. 35-54.)
40. The Commission finds that when the GPM is considered along with the applicable written policies and other maps of the Comprehensive Plan that encourage moderate-density mixed-use transit-oriented development and the Project's features that will enhance and respect the neighborhood, the Project is not inconsistent with the GPM or the Comprehensive Plan. The GPM's designation of the Project as a Neighborhood Conservation Area does not alter the Commission's conclusion that the Project is not inconsistent with the Comprehensive Plan as a whole.

CONCLUSIONS OF LAW

1. The Commission must consider the competing policies encouraging transit-oriented mixed-use development near Metrorail stations and preserving the residential nature of District neighborhoods set forth in the various elements of the Comprehensive Plan, including the Land Use Element, Northeast Area Element, FLUM, and GPM.
2. Having considered these competing policies in light of the Comprehensive Plan as a whole, the Commission concludes that the Project is not inconsistent with the Comprehensive Plan.
3. The Commission concludes that the Project is not inconsistent with the Land Use Element of the Comprehensive Plan. Specifically, the Project is not inconsistent with the policies set forth in LU-1.3.1, LU-1.3.5, LU-2.1.6, LU-2.1.8, and LU-2.3.1 for the reasons set forth in the Findings of Fact.
4. The Commission concludes that the Project is not inconsistent with the Northeast Area Element of the Comprehensive Plan. Specifically, the Project is not inconsistent with the policies set forth in UNE-1.1.1 and UNE-2.6.1 for the reasons set forth in the Findings of Fact.
5. The Commission concludes that the Project is not inconsistent with the FLUM. Specifically, the Project is not inconsistent with the FLUM's designation of more than one half of the Project as Low Density Residential for the reasons set forth in the Findings of Fact.
6. The Commission concludes that the Project is not inconsistent with the GPM. Specifically, the Project is not inconsistent with the GPM's designation of the Project as a Neighborhood Conservation Area for the reasons set forth in the Findings of Fact.

7. For these reasons, the Commission finds that the Applicant has met its burden of addressing each material contested issue. The Commission's judgment that the Project is not inconsistent with the Comprehensive Plan is supported by sufficient findings of fact. The record supports each finding of fact with respect to the FLUM, the six written policy elements, and the GPM.

DECISION

Based upon the above Findings of Fact and Conclusions of Law, the Zoning Commission for the District of Columbia hereby **ORDERS** that Zoning Commission Order No. 10-28, effective June 8, 2012, shall be supplemented by the addition of the above Findings of Fact and Conclusions of Law.

On July 25, 2013, upon the motion of Chairman Hood, as seconded by Vice Chairman Cohen, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Marcie I. Cohen, Peter G. May, and Michael G. Turnbull to adopt; Robert E. Miller, not having participated, not voting).

In accordance with the provisions of 11 DCMR § 2038, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on November 8, 2013.